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R. Risher
Per L.J.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-188968

DATE: October 17, 1978

MATTER OF: Catherine Benton - Reconsideration - Relief from
liability for use of foreign air carrier

DIGEST: Where use of appropriated funds for Peace Corps volunteer's transportation by foreign air carrier is prohibited by Fly America Act, cost may not be paid by ACTION under section 15(a) of Peace Corps Act authorizing use of funds outside U.S. without regard to restrictions on obligations and expenditures. This is special authority for coping with unusual situations peculiar to foreign assistance organizations, not for solving problems which are common to all agencies. The hardship imposed by the sanction of personal liability under the Fly America Act is imposed Government-wide and is by no means peculiar to carrying out the functions of ACTION or other foreign assistance organizations.

By letter dated December 6, 1977, Mr. James E. Allen, Authorized Certifying Officer, ACTION Agency, requests further consideration of the Matter of Catherine Benton, B-188968, August 8, 1977.

That decision imposes personal liability on a Peace Corps volunteer who exchanged a ticket on Pan American Airways for one on Swiss Air and flew from Delhi, India, to New York on that foreign air carrier when transportation by certificated U.S. air carrier was available. We held that Ms. Benton was liable for the cost, even though she may not have been counseled that the use of appropriated funds for such transportation is prohibited by the "Fly America Act," section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, Pub. L. No. 93-623, January 3, 1975, 88 Stat. (Part 2) 2104 (49 U.S.C. 1517).

The certifying officer now asks whether, notwithstanding the foregoing decision, ACTION can pay the cost of this transportation, \$1,115, under the authority granted by section 15(a) of the Peace Corps Act, Pub. L. No. 87-293, September 22, 1961, 75 Stat. 621 (22 U.S.C. 2514(a) (1976)). Section 15(a) provides in pertinent part as follows:

"Funds made available for the purposes of this Act may be used for * * * expenditures outside the United States for

B-188978

"the procurement of supplies and services and for other administrative and operating purposes (other than compensation of employees) without regard to such laws and regulations governing the obligation and expenditure of Government funds as may be necessary to accomplish the purposes of this Act."

This section is for all practical purposes identical with section 636(b) of the Foreign Assistance Act of 1961, Pub. L. No. 87-195, September 4, 1961, 75 Stat. 458 (22 U.S.C. 2396(b) (1976)), which replaced section 411(d) of the Mutual Security Act of 1954, as amended, 22 U.S.C. 1931(d) (1958). The utilization of the authority bestowed by this provision of law requires the specific approval of the Director or other high official of the Peace Corps and is governed by the guidelines prescribed by section 109(c) of Exec. Order No. 10,893, 3 C.F.R. 420 (1959 - 1963 compilation). House Rep. No. 1115 on H.R. 7500, 87th Cong., 1st Sess., September 5, 1961, page 31. See also Hearings before the Committee on Foreign Relations, United States Senate, on S. 2000, 87th Cong., 1st Sess., June 22 and 23, 1961, pages 103, 241, and 242.

Section 109(c) of the Executive order, which when issued pertained to section 411(d) of the Mutual Security Act of 1954, provided in pertinent part as follows:

"The utilization of funds without regard to the existing laws governing the obligation and expenditure of Government funds as authorized by section 411(d) of the Act shall be limited as far as practicable and shall in any event be confined to instances in which such utilization * * * is deemed to obviate or mitigate hardship occurring with respect to personnel administering functions under the Act in connection with the administration of these functions or with respect to the families of personnel by reasons of the duties of the respective heads of families under the Act * * *."

In a memorandum dated November 15, 1977, a copy of which accompanied the certifying officer's submission, ACTION's Associate General Counsel states that section 15(a) of the Peace Corps Act, has been deemed applicable to volunteers as well as employees and has been used, for example, to pay the cost of transporting a volunteer's personal effects in excess of the authorized weight limit

B-188968

to prevent hardship on the volunteer in carrying out the purposes of the Act. The memorandum contains a recommendation that Ms. Benton's transportation costs be paid by ACTION under this authority based on the grounds that: (1) the circumstances involved meet the criteria for the use of this authority, i.e., requiring her to pay the cost would impose an unusual hardship which arose out of her official duties as a volunteer and payment by the agency would accomplish the purposes of the Peace Corps Act; and (2) since this authority permits the use of funds without regard to laws and regulations governing the obligation and expenditure of Government funds, such payment is not precluded by 49 U.S.C. 1517. ACTION's Associate Director for International Operations who now administers the Peace Corps has approved this recommendation.

However, this Office has previously determined that the provision of law here in question may not be construed as a waiver of or an exception to all laws and regulations relating to the obligation or expenditure of Government funds. Like section 636(b) of the Foreign Assistance Act of 1961 applicable to other foreign assistance organizations, section 15(a) is special authority granted the Peace Corps to assist in coping with out-of-the ordinary situations arising from the unusual nature of its functions and the out-of-the-way places outside the United States where these functions are performed. It was intended to be judiciously applied. We do not think this authority may properly be used to circumvent laws and regulations to resolve administrative problems which are not peculiar to foreign assistance organizations but confront almost any agency in the course of its operations. For example, we have held that section 15(a) of the Peace Corps Act, the provision here in question, does not grant authority for the use of appropriated funds to relieve an accountable officer of liability when such officer loses Government funds through negligence and is therefore not eligible for relief by the General Accounting Office under the provisions of 31 U.S.C. 82a-1, B-182474, June 2, 1975; B-163436, October 30, 1968. As was stated in the latter decision, this provision was not intended to "obviate or mitigate hardship" to an individual which results from that individual's negligence. Neither was it intended, in our view, to obviate or mitigate hardship to an individual which results from an individual's failure, whether knowingly or unknowingly, to comply with a specific statutory requirement with a precise sanction of disallowance such as that imposed by the Fly America Act.


B-188962

Broad in its scope the Fly America Act requires use of U.S. air carriers, where available, for all Government financed commercial foreign air transportation of personnel and property and, in cases of noncompliance, requires disallowance of expenditures of appropriated funds as follows:

" * * * The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment for such personnel or cargo transportation on an air carrier not holding a certificate under section 1371 of this title in the absence of satisfactory proof of the necessity therefor * * *."

For a discussion of the legislative history of this law and of the problems which have been encountered in its administration see B-189711, January 27, 1978. It will suffice here to say that, in spite of a general awareness that this legislation imposes increased costs on the Government and inconvenience and hardship on employees, the Congress has neither revoked nor modified its provisions. It applies to all instrumentalities of the United States and it gives the Comptroller General no authority to make exceptions to its provisions. We share ACTION's concern that the sanction of personal liability that the act imposes for noncompliance is a harsh one. However, it is a hardship imposed Government-wide and one that is by no means peculiar to carrying out the functions of ACTION or other foreign assistance organizations.

For the foregoing reasons, it is our opinion that where the use of appropriated funds to pay the cost of a volunteer's transportation by foreign air carrier is prohibited by section 5 of the Fly America Act, such cost may not be paid by ACTION under the authority granted by section 15(a) of the Peace Corps Act. For the same reason, we do not believe that section 15(a) constitutes authority to ship an employee's household goods and personal effects in excess of the authorized weight limitations. We will not, however, object to ACTION's past determination, referred to above, to use section 15(a) to relieve an employee of personal liability for the cost of shipping goods in excess of the weight limitation.


Deputy Comptroller General
of the United States